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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CYNTHIA L. CZUCHAJ, individually
and on behalf of all others similarly
situated, et al.,

Plaintiffs,

vs.

CONAIR CORPORATION, a Delaware
corporation,

Defendant.

Case No.: 13-cv-1901-BEN (RBB)

**ORDER DENYING DEFENDANT'S
MOTION FOR LEAVE TO FILE
SUR-REPLY**

Before this Court is an *Ex Parte* Motion for Leave to File Sur-Reply, filed by Defendant Conair Corporation. (Docket No. 215.) Defendant contends that Plaintiffs raised new arguments and evidence in their reply brief in support of their motion for approval of class notice plan. Plaintiffs filed an opposition. (Docket No. 217.)

"[W]here new evidence is presented in a reply to a motion . . . , the district court should not consider the new evidence without giving the non-movant an opportunity to respond." *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996). The Court has discretion to either allow a party to file a sur-reply or disregard the new evidence. *See Johnson v. Wennes*, No. 08cv1798, 2009 WL 1161620, at *2 (S.D. Cal. Apr. 28, 2009); *Lewis v. Gother Ins. Co.*, No. 09cv252, 2009 WL 3698028, at *1 (S.D. Cal. Nov. 5,

1 2009). Defendant's Motion is **DENIED**. The Court will disregard any new evidence
2 raised in the reply brief.

3 **IT IS SO ORDERED.**

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5 Dated: March 10, 2016
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HON. ROGER T. BENITEZ
United States District Judge